MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

PAUL L. VARSALONA,

Appellant

v.

RAFAEL JIMENEZ ORTIZ.

Respondent

DOCKET NUMBER WD76797

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: October 14, 2014

Appeal From:

Circuit Court of Clay County, MO
The Honorable Shane Terril Alexander, Judge

Appellate Judges:

Division Two
Victor C. Howard, P.J., James Edward Welsh, Anthony Rex Gabbert, JJ.

Attorneys:

Danieal Miller, Columbia, MO	Counsel for Appellant
Bradley Lockenvitz, Columbia, MO	Co-Counsel for Appellant

Attorneys:

Blaine Dickeson, St. Louis, MO	Counsel for Respondent
John Weist, Overland Park, KS	Co-Counsel for Respondent

PAUL L. VARSALONA, Appellant, v.
RAFAEL JIMENEZ ORTIZ, Respondent

WD76797   **Clay County**

Before Division Two Judges: Howard, P.J., Welsh, and Gabbert, JJ.

Paul Varsalona filed a lawsuit against Rafael Jimenez Ortiz claiming that Ortiz negligently collided with the back of his vehicle. After three days of trial, the jury returned a verdict in favor of Ortiz. Varsalona raises two claims on appeal, both of which are based on his contention that Ortiz was required to plead as an affirmative defense that Varsalona backed into him.

Affirmed.

Division Two holds:

The circuit court did not err either in (1) admitting Ortiz's testimony that Varsalona had backed into Ortiz's car, or (2) submitting a verdict director based on specific negligence (as opposed to the rear-end doctrine), because Ortiz was not required to plead his claim that Varsalona backed into his vehicle as an affirmative defense. Ortiz was entitled to present a defense to Varsalona's claim that he rear-ended Varsalona's vehicle. Thus, the circuit court did not err in admitting Ortiz's testimony that Varsalona backed into his vehicle or in its choice of MAI verdict-directing instruction.

Opinion by James Edward Welsh, Judge   October 14, 2014

＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊ ＊